

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USDC Docket Number : 05-cv-11052

Gisselle Ruiz

v.

Bally Total Fitness Holding Corp.,

CLERK'S CERTIFICATE

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents numbered:

1-42

and contained in Volume(s) I are the original or electronically filed pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 8/9/2006.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on August 25, 2006.

Sarah A Thornton, Clerk of Court

By:

Jeanette Simon
Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 8/28/06.

D. Barchard
Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:05-cv-11052-NMG**

Ruiz v. Bally Total Fitness Holding Corporation et al
Assigned to: Judge Nathaniel M. Gorton
Demand: \$6,900,000
Case in other court: Suffolk County Superior Court of Massachusetts, 05-01496
Cause: 28:1446 Notice of Removal
Date Filed: 05/19/2005
Jury Demand: Plaintiff
Nature of Suit: 890 Other
Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Gisselle Ruiz

*Individually and on behalf of all
others similarly situated*

represented by **Elizabeth A. Ryan**
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V.

Defendant

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Defendant**Bally Total Fitness Corp.**

represented by **Erica Tennyson**
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LEAD ATTORNEY
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Howard M. Cooper

(See above for address)

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Kathleen M. Genova
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Norman T. Finkel
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ATTORNEY TO BE NOTICED

William R. Klein
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LEAD ATTORNEY
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Zoe Butler-Stark
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ATTORNEY TO BE NOTICED

Juliet A. Davison
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/19/2005	<u>1</u>	NOTICE OF REMOVAL by Holiday Universal, Inc., Bally Total Fitness Corp. from Suffolk County Superior Court of Massachusetts, case number 05-01496. \$ 250, receipt number 64410, filed by Holiday Universal, Inc., Bally Total Fitness Corp..(Elefther, Elizabeth) (Entered: 05/20/2005)
05/19/2005		If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Bowler. (Elefther, Elizabeth) (Entered: 05/20/2005)
05/19/2005	<u>2</u>	NOTICE of Appearance by Howard M. Cooper, Kathleen M.

		Genova on behalf of Holiday Universal, Inc., Bally Total Fitness Corp. (Elefther, Elizabeth) (Entered: 05/20/2005)
05/26/2005	<u>3</u>	CORPORATE DISCLOSURE STATEMENT by Holiday Universal, Inc., Bally Total Fitness Corp. (Elefther, Elizabeth) (Entered: 05/27/2005)
06/08/2005	<u>4</u>	NOTICE of Scheduling Conference Scheduling Conference set for 8/5/2005 02:30 PM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) (Entered: 06/08/2005)
06/20/2005	<u>5</u>	STATE COURT Record Local Rule 81.1 Filing. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D)(Elefther, Elizabeth) (Entered: 06/21/2005)
07/20/2005	<u>6</u>	AMENDED COMPLAINT against Holiday Universal, Inc., Bally Total Fitness Corp., filed by Gisselle Ruiz. (Attachments: # <u>1</u> Exhibit A)(Roddy, John) (Entered: 07/20/2005)
07/29/2005	<u>7</u>	JOINT STATEMENT of counsel <i>Pursuant to Fed. R. Civ. P. 26(f) And Local Rule 16.1.</i> (Roddy, John) (Entered: 07/29/2005)
08/02/2005	<u>8</u>	SUMMONS Returned Executed Bally Total Fitness Corp. served on 7/20/2005, answer due 8/9/2005. (Roddy, John) (Entered: 08/02/2005)
08/02/2005	<u>9</u>	SUMMONS Returned Executed Holiday Universal, Inc. served on 7/20/2005, answer due 8/9/2005. (Roddy, John) (Entered: 08/02/2005)
08/02/2005	<u>10</u>	NOTICE of Appearance by Elizabeth A. Ryan on behalf of Gisselle Ruiz (Ryan, Elizabeth) (Entered: 08/02/2005)
08/03/2005	<u>11</u>	Notice of correction to docket made by Court staff. Attorney Elizabeth Ryan's record updated to permit email notice. (Hurley, Virginia) (Entered: 08/03/2005)
08/05/2005	<u>12</u>	Electronic Clerk's Notes for proceedings held before Judge Nathaniel M. Gorton : Scheduling Conference. Automatic discovery 12/15/05, amendments and or supplements 12/31/05, written discovery served 2/28/06, answered 3/31/06. Motions support class 4/15/06, oppositions 4/30/06. Joint statement re: mediation 5/15/06. Motion hearing on class cert 5/24/06 at 3:00 p.m. Post class schedule. Automatic discovery 6/30/06, written discovery 8/31/06, responses 9/30/06, non expert

		10/31/06, plaintiffs expert des 11/30/06, defendants 1/31/07, dispositive motions 2/28/07, oppositions 3/31/07. Final Pretrial Conference set for 5/23/2007 03:00 PM in Courtroom 4 before Judge Nathaniel M. Gorton. Jury Trial set for 7/9/2007 09:00 AM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) (Entered: 08/16/2005)
08/05/2005	●	NOTICE of Hearing re class certification :Hearing set for 5/24/2006 03:00 PM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) (Entered: 08/16/2005)
08/08/2005	●11	MOTION for Extension of Time for Responding to Amended Class Action Complaint by Holiday Universal, Inc., Bally Total Fitness Corp..(Elefther, Elizabeth) (Entered: 08/08/2005)
08/08/2005	●12	CERTIFICATION pursuant to Local Rule 16.1 by Holiday Universal, Inc., Bally Total Fitness Corp..(Elefther, Elizabeth) (Entered: 08/08/2005)
08/08/2005	●13	CERTIFICATION pursuant to Local Rule 16.1 (D)(3) of Plaintiff by Gisselle Ruiz.(Ryan, Elizabeth) (Entered: 08/08/2005)
08/17/2005	●14	MOTION to Stay by Holiday Universal, Inc., Bally Total Fitness Corp..(Elefther, Elizabeth) (Entered: 08/17/2005)
08/17/2005	●15	MEMORANDUM in Support re 14 MOTION to Stay filed by Holiday Universal, Inc., Bally Total Fitness Corp.. (Elefther, Elizabeth) (Entered: 08/17/2005)
08/17/2005	●16	AFFIDAVIT of Kathleen M Genova by Holiday Universal, Inc., Bally Total Fitness Corp.. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D)(Elefther, Elizabeth) Additional attachment(s) added on 8/18/2005 (Elefther, Elizabeth). (Entered: 08/18/2005)
08/31/2005	●17	RESPONSE to Motion re 14 MOTION to Stay filed by Gisselle Ruiz. (Roddy, John) (Entered: 08/31/2005)
09/08/2005	●	Judge Nathaniel M. Gorton : Electronic ORDER entered granting 11 Motion for Extension of Time, answer due 30 days after courts ruling on motion to stay. (Nicewicz, Craig) (Entered: 09/08/2005)
09/12/2005	●18	Assented to MOTION for Leave to File <i>Reply Memorandum in Support of Defendants' Motion to Stay</i> by Holiday Universal, Inc., Bally Total Fitness Corp..(Genova, Kathleen) (Entered: 09/12/2005)

		09/12/2005)
09/12/2005	19	MEMORANDUM in Support re 18 Assented to MOTION for Leave to File <i>Reply Memorandum in Support of Defendants' Motion to Stay</i> filed by Holiday Universal, Inc., Bally Total Fitness Corp.. (Genova, Kathleen) (Entered: 09/12/2005)
09/19/2005		Judge Nathaniel M. Gorton : ElectronicORDER entered granting 18 Motion for Leave to File (Nicewicz, Craig) (Entered: 09/19/2005)
10/14/2005	20	Joint MOTION for Extension of Time of <i>Scheduling Deadlines by Ninety Days and Clarify Scheduling Order</i> by Holiday Universal, Inc., Bally Total Fitness Corp..(Genova, Kathleen) (Entered: 10/14/2005)
11/03/2005		Judge Nathaniel M. Gorton : ElectronicORDER entered granting 20 Motion for Extension of Time (Nicewicz, Craig) (Entered: 11/04/2005)
11/04/2005	21	NOTICE of Withdrawal of Appearance by Kathleen M. Genova (Genova, Kathleen) (Entered: 11/04/2005)
11/04/2005	22	NOTICE of Appearance by Juliet A. Davison on behalf of all defendants (Davison, Juliet) (Entered: 11/04/2005)
11/29/2005	23	Judge Nathaniel M. Gorton : ORDER entered. Motions terminated: Denying 14 MOTION to Stay filed by Holiday Universal, Inc., Bally Total Fitness Corp.. 1. Defendants responsive pleadings shall be filed on or before 12/31/05. 2. all other deadlines are extended by 90 days. 3.Hearing on class certification set for 8/16/2006 03:00 PM in Courtroom 4 before Judge Nathaniel M. Gorton. 4. Pretrial Conference set for 8/17/2007 03:00 PM in Courtroom 4 before Judge Nathaniel M. Gorton.(Nicewicz, Craig) (Entered: 11/29/2005)
12/30/2005	24	MOTION to Dismiss <i>First Amended Class Action Complaint Pursuant to Rule 12(b)(2) and 12(b)(6)</i> by Holiday Universal, Inc., Bally Total Fitness Corp..(Davison, Juliet) (Entered: 12/30/2005)
12/30/2005	25	MEMORANDUM in Support re 24 MOTION to Dismiss <i>First Amended Class Action Complaint Pursuant to Rule 12(b)(2) and 12(b)(6)</i> filed by Holiday Universal, Inc., Bally Total Fitness Corp.. (Attachments: # 1 # 2)(Davison, Juliet) (Entered: 12/30/2005)

01/12/2006	<u>26</u>	Assented to MOTION for Extension of Time to 2/3/06 to File Response/Reply as to <u>24</u> MOTION to Dismiss <i>First Amended Class Action Complaint Pursuant to Rule 12(b)(2) and 12(b)(6)</i> by Gisselle Ruiz.(Roddy, John) (Entered: 01/12/2006)
01/18/2006	●	Judge Nathaniel M. Gorton : Electronic ORDER entered granting <u>26</u> Motion for Extension of Time to File Response/Reply re <u>26</u> Assented to MOTION for Extension of Time to 2/3/06 to File Response/Reply as to <u>24</u> MOTION to Dismiss <i>First Amended Class Action Complaint Pursuant to Rule 12(b)(2) and 12(b)(6)</i> Responses due by 2/3/2006 (Nicewicz, Craig) (Entered: 01/18/2006)
01/26/2006	<u>27</u>	NOTICE of Withdrawal of Appearance by Zoe Butler-Stark (Butler-Stark, Zoe) (Entered: 01/26/2006)
02/03/2006	<u>28</u>	Opposition re <u>24</u> MOTION to Dismiss <i>First Amended Class Action Complaint Pursuant to Rule 12(b)(2) and 12(b)(6)</i> filed by Gisselle Ruiz. (Attachments: # <u>1</u> Exhibit A - Bally's Contract# <u>2</u> Exhibit B - Pulcini Decision)(Roddy, John) (Entered: 02/03/2006)
02/07/2006	<u>29</u>	Assented to MOTION for Leave to File <i>Reply Memorandum to Opposition to Defendants' Motion to Dismiss</i> by Holiday Universal, Inc., Bally Total Fitness Corp..(Davison, Juliet) Additional attachment(s) added on 2/17/2006 (Sonnenberg, Elizabeth). (Entered: 02/07/2006)
02/22/2006	●	Judge Nathaniel M. Gorton : Electronic ORDER entered granting <u>29</u> Motion for Leave to File, Reply not to exceed 10 pages. Reply due within 10 days of this order. (Nicewicz, Craig) (Entered: 02/22/2006)
03/02/2006	<u>30</u>	Reply MEMORANDUM in Support re <u>24</u> MOTION to Dismiss <i>First Amended Class Action Complaint Pursuant to Rule 12(b)(2) and 12(b)(6)</i> filed by Holiday Universal, Inc., Bally Total Fitness Corp.. (Davison, Juliet) Modified on 3/2/2006 (Sonnenberg, Elizabeth). (Entered: 03/02/2006)
03/02/2006	<u>31</u>	AFFIDAVIT of Juliet A. Davison re <u>30</u> Memorandum in Support of Motion to Dismiss <i>First Amended Class Action Complaint</i> by Holiday Universal, Inc., Bally Total Fitness Corp.. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u> # <u>7</u> # <u>8</u> # <u>9</u>) (Davison, Juliet) (Entered: 03/02/2006)
03/07/2006	<u>32</u>	Assented to MOTION for Leave to Appear Pro Hac Vice by

		Norman T. Finkel by Holiday Universal, Inc., Bally Total Fitness Corp..(Davison, Juliet) Additional attachment(s) added on 3/8/2006 (Sonnenberg, Elizabeth). Additional attachment(s) added on 3/8/2006 (Sonnenberg, Elizabeth). (Entered: 03/07/2006)
03/07/2006	33	Assented to MOTION for Leave to Appear Pro Hac Vice by William R. Klein by Holiday Universal, Inc., Bally Total Fitness Corp..(Davison, Juliet) Additional attachment(s) added on 3/8/2006 (Sonnenberg, Elizabeth). Additional attachment(s) added on 3/8/2006 (Sonnenberg, Elizabeth). (Entered: 03/07/2006)
03/08/2006		Judge Nathaniel M. Gorton : Electronic ORDER entered granting 32 Motion for Leave to Appear Pro Hac Vice Added Norman T. Finkel for Holiday Universal, Inc. and Bally Total Fitness Corp. (Sonnenberg, Elizabeth) (Entered: 03/08/2006)
03/08/2006		Judge Nathaniel M. Gorton : Electronic ORDER entered granting 33 Motion for Leave to Appear Pro Hac Vice Added William R. Klein for Holiday Universal, Inc. and Bally Total Fitness Corp. (Sonnenberg, Elizabeth) (Entered: 03/08/2006)
03/08/2006		Filing fee: \$ 100.00, receipt number 70899 regarding Pro Hac Vice for Norman T. Finkel and William R. Klein (Sonnenberg, Elizabeth) (Entered: 03/08/2006)
05/08/2006	34	NOTICE of Appearance by Erica Tennyson on behalf of all defendants (Tennyson, Erica) (Entered: 05/08/2006)
05/09/2006	35	MOTION to Stay <i>Discovery</i> by Holiday Universal, Inc., Bally Total Fitness Corp.. (Attachments: # 1 Exhibit Exhibit A# 2 Exhibit Exhibit B)(Tennyson, Erica) (Entered: 05/09/2006)
05/22/2006	36	Opposition re 35 MOTION to Stay <i>Discovery And/Or For Protective Order Pending Resolution Of Defendants' Motion To Dismiss</i> filed by Gisselle Ruiz. (Attachments: # 1 Exhibit A - Robinson Motion To Dismiss)(Roddy, John) (Entered: 05/22/2006)
05/25/2006	37	Joint MOTION for Extension of Time to Extend Scheduling Deadlines by Bally Total Fitness Corp..(Tennyson, Erica) (Entered: 05/25/2006)
05/30/2006		Judge Nathaniel M. Gorton : Electronic ORDER entered finding as moot 35 Motion to Stay, granting 37 Motion for Extension of Time Jury Trial set for 12/10/2007 09:00 AM in

		Courtroom 4 before Judge Nathaniel M. Gorton. Pretrial Conference set for 11/15/2007 03:00 PM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) Modified on 5/31/2006 (Nicewicz, Craig). (Entered: 05/31/2006)
05/31/2006	●	ELECTRONIC NOTICE of Hearing :Hearing on class certification set for 10/26/2006 03:00 PM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) (Entered: 05/31/2006)
06/01/2006	●38	NOTICE by Bally Total Fitness Corp. of <i>Supplemental Authority on Pending Motion to Dismiss</i> (Attachments: # <u>1</u> Exhibit A)(Tennyson, Erica) (Entered: 06/01/2006)
06/29/2006	●39	MOTION to Stay <i>Discovery and/or for Protective Order Pending Resolution of Defendants' Motion to Dismiss (Renewed)</i> by Holiday Universal, Inc., Bally Total Fitness Corp..(Tennyson, Erica) (Entered: 06/29/2006)
07/03/2006	●40	Opposition re <u>39</u> MOTION to Stay <i>Discovery and/or for Protective Order Pending Resolution of Defendants' Motion to Dismiss (Renewed)</i> filed by Gisselle Ruiz. (Roddy, John) (Entered: 07/03/2006)
07/17/2006	●41	Judge Nathaniel M. Gorton : ORDER entered. MEMORANDUM AND ORDER. Based on the foregoing memorandum, defendants motio to dismiss (docket no. <u>24</u>) is, with respect to personal jurisdiction, DENIED, but is, in all other respects, ALLOWED. So ordered.(Nicewicz, Craig) (Entered: 07/17/2006)
07/17/2006	●	Judge Nathaniel M. Gorton : Electronic ORDER entered finding as moot <u>39</u> Motion to Stay (Nicewicz, Craig) (Entered: 07/17/2006)
08/09/2006	●42	NOTICE OF APPEAL as to <u>41</u> Memorandum & ORDER, by Gisselle Ruiz. \$ 455 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 8/29/2006. (Roddy, John) (Entered: 08/09/2006)
08/11/2006	●	Filing fee: \$ 455.00, receipt number 74361 for <u>42</u> Notice of

	Appeal, (Sonnenberg, Elizabeth) (Entered: 08/11/2006)
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